

APPENDIX F-XX

Historic and Archeological Resource Protection, Section 106 Process

Hawaii Department of Land and Natural Resource State Historic Preservation Division

Permit Packet Includes:

1. Process Overview
2. Procedures Checklist and Documentation Requirements

Reference Materials

1. Section 106 of the National Historic Preservation Act

Approval or Permit Required: To construct any **federal undertaking** (develop structures and perform activities) that could impact cultural, historic, or archeological resources as defined in Section 106 of the National Historic Preservation Act.

Contact Information: State Historic Preservation Division (SHPD)
601 Kamokila Blvd, #555 Kapolei, Hawaii, 96707
Phone: 808-692-8015, Fax: 808-692-8020

Website: <http://hawaii.gov/dlnr/hpd/newrules.htm>

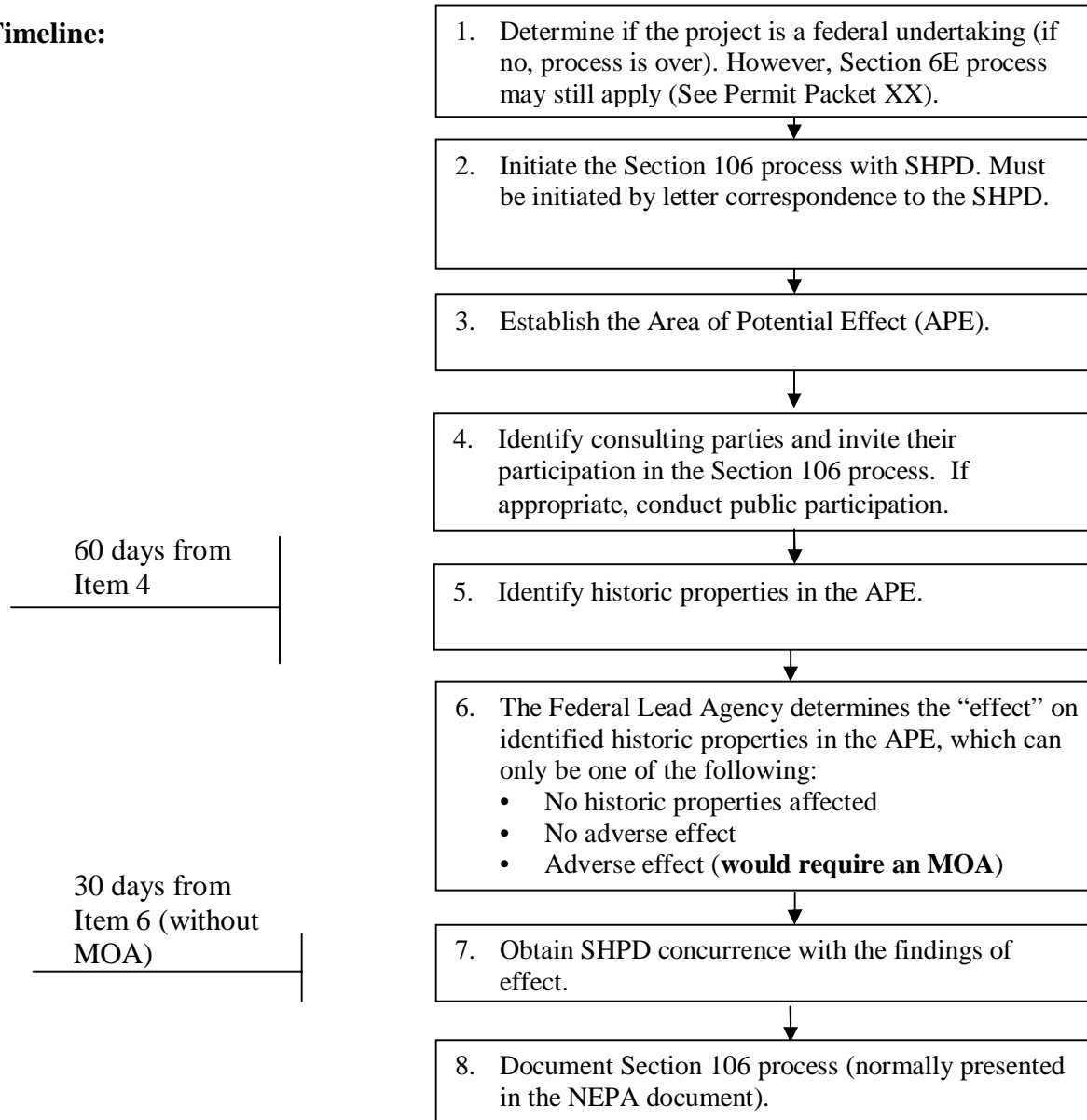
ACHP website provides detailed and valuable information about Section 106:
<http://www.achp.gov/106summary.html>

APPENDIX F-XX

Historic and Archeological Resource Protection, Section 106 Process

Hawaii Department of Land and Natural Resource State Historic Preservation Division

Timeline:



Total Time Period: **90 days
(without MOA)**

APPENDIX F-XX

Historic and Archeological Resource Protection, Section 106 Process

Hawaii Department of Land and Natural Resource State Historic Preservation Division

Fees	Amount	Maximum
Archaeological Assessment	50	50
Archaeological Inventory Survey Plan	0	150
Archaeological, Architectural or Ethnographic Survey Report	450	450
Preservation Plan	150	150
Monitoring Plan	25	25
Archaeological Data Recovery Plan	0	150
Burial Treatment Plan	0	250
Archaeological monitoring Report, if resources reported	0	100
Archaeological Data Recovery Report	0	450
Ethnographic Documentation Report	0	450
Burial Disinterment Report	0	25
Osteological Analysis Report	0	50
Total Fees:	\$675 (minimum)	\$2300 (maximum)

Section 106 Process Procedures Checklist and Documentation Requirements

Procedures Checklist

Step	Procedure or Milestone	Notes
1	Is the project a federal undertaking?	If yes, proceed to step 2. If no, the project does not require compliance with Section 106, but may require compliance with Hawaii's historic preservation laws, Chapter 6E.
2	Initiate the Section 106 process with SHPD.	Section 106 must be initiated by letter correspondence to the SHPD. See Documentation Requirements for the contents of the initiation letter.
3	Establish the Area of Potential Effect (APE).	The APE is the geographic area within which an undertaking may directly or indirectly affect an historic property. The APE is influenced by the scale and nature of an undertaking, and does not have to contain historic properties. The Federal Lead Agency has the authority to determine the APE, but the SHPD should be consulted with before the APE is established. The initiation letter could propose the APE.
4	Identify consulting parties and invite their participation in the Section 106 process. If appropriate, conduct public participation.	In addition to the consultation with the SHPD, Section 106 requires consultation (obtain input and information) with groups and individuals who may have knowledge about historic properties at or near the project site. This also includes reaching out to and inviting participation from appropriate spokespeople of Native Hawaiian groups. The inclusion of the groups as consulting parties would be based on project specific issues. The SHPD can provide recommendations for consulting parties. The identified consulting parties may be contacted by letter. Although The Federal Lead Agency must decide early how and when to involve the public, a formal public involvement plan is not required.
5	Identify historic properties in the APE.	The Federal Lead Agency is required to conduct a "good faith" effort in identifying historic properties in the APE. What is considered "good faith" could vary substantially depending on the project site (i.e., likely presence of historic properties) and the nature of the undertaking. Similar to determining the APE, the Federal Lead Agency is authorized to determine what good faith is, but the SHPD should be consulted with before such a decision is made. For some undertakings, identifying historic properties may require the services of an archaeologist and/or architectural historian. For smaller projects, the SHPD staff may be of assistance.
6	The Federal Lead Agency determines the "effect" on identified historic properties in the APE, which can only be one of the following: <ul style="list-style-type: none"> No historic properties affected No adverse effect Adverse effect 	This step is commonly called "findings of effect." If no historic properties are identified in the APE, a finding of "no historic properties affected" would be appropriate. If an historic property(ies) is within the APE, the Federal Lead Agency has one of two choices: "no adverse effect" or "adverse effect." In general, if the undertaking does not compromise the "attributes" that

Step	Procedure or Milestone	Notes
7	Obtain SHPD concurrence with the findings of effect.	<p>make the site or property historic (the reasons why it is on or eligible for the National Register), a “no adverse effect” may be appropriate. Otherwise, an “adverse effect” may be appropriate. Determining whether an effect is adverse or not can be extremely complicated and at times subjective. The services of an archaeologist and/or architectural historian may be required. Assistance can also be obtained through consultation with the SHPD and other parties. More detailed definitions of these findings of effect are provided in 36 CFR 800. Note that effect findings are applied to individual historic properties and to the project as a whole. Each historic property, if one exists in the APE, receives a determination, as does the project.</p> <p>The request for concurrence on “no historic properties affected” determinations can be sent from the Federal Lead Agency or its delegated consultants. “No adverse effect” or “adverse effect” letters must be by letter signed by the Federal Lead Agency (see Documentation Requirements). If the Federal Lead Agency renders an “adverse effect”, an MOA is required. This permit packet does not provide the full procedures and documentation requirements if the Federal Lead Agency renders an “adverse effect.” If the Federal Lead Agency renders a “no historic properties affected” or a “no adverse effect” determination, and the SHPD concurs, proceed to the next step. If the SHPD does not concur and the project cannot be redesigned to the satisfaction of the SHPD, 36 CFR 800 provides the means to resolve the dispute. This module does not provide Section 106 dispute resolution procedures because such disputes rarely occur on.</p>
8	Document Section 106 process	<p>The resolution of the Section 106 process is normally presented in the NEPA document. For example, correspondence associated with the Section 106 process should appear as an appendix to the final NEPA document. 36 CFR 800.11 provides standards for documentation.</p>

Documentation Requirements

Initiation Letter

Regulations require initiation with SHPD, but do not stipulate how to initiate. Sometimes an initiation letter is sent to the SHPD to begin the Section 106 process. The initiation letter should provide a description of the undertaking and the potential for affecting historic properties. If possible, the letter should describe or provide a map of the undertaking's APE, and list the proposed consulting parties.

Invitations to Consulting Parties

The letter to invite consulting parties should provide a description of the undertaking, and provide the opportunity for those who may have knowledge about historic properties in the area to provide information.

Identifying Historic Properties

The State Historic Preservation Office typically relies on archaeological and historic architectural studies to identify historic properties in an undertaking's APE. Some areas have been previously studied or are known to have a very low probability of resource occurrence. The need to commission a new study to identify historic properties in an undertaking's APE, and the scope of that study if required, should be discussed with the Federal Lead Agency and the SHPD. A study would typically require the services of a qualified archaeologist or architectural historian.

Findings of Effect Letter

The letter rendering a "no historic properties affected" determination should provide the basis by which the Federal Lead Agency has determined that there are no historic properties in the undertaking's APE that would be affected by proceeding with the undertaking.

The letter rendering a "no adverse affect" determination should provide the basis by which those impacts that will occur to historic properties, are not "adverse" to those features of the property that make it on or eligible for listing as historic.